IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2716 of 2006
With
SPECIAL CIVIL APPLICATION No. 145 of 2006
With
SPECIAL CIVIL APPLICATION No. 268 of 2006
With
SPECIAL CIVIL APPLICATION No. 1092 of 2006
With
SPECIAL CIVIL APPLICATION No. 1571 of 2006
With
SPECIAL CIVIL APPLICATION No. 1834 of 2006
With
SPECIAL CIVIL APPLICATION No. 1975 of 2006
With
SPECIAL CIVIL APPLICATION No. 2085 of 2006
With
SPECIAL CIVIL APPLICATION No. 2100 of 2006
With
SPECIAL CIVIL APPLICATION No. 2113 of 2006
With
SPECIAL CIVIL APPLICATION No. 2715 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOKILABEN W/O JASWANTLAL PANCHAL - Petitioner(s)
Versus
REGIONAL PASSPORT OFFICER - Respondent(s)

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Appearance :
MR MURALI N DEVNANI for Petitioner(s) : 1,
MR JM MALKAN WITH MR MA SHAIKH for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/02/2006

COMMON ORAL JUDGMENT

Rule. Shri J.M.Malkan, learned Asst. Solicitor General of India with Shri M.A.Shaikh, learned Additional Standing Counsel for the Central Government waive service of rule on behalf of the respective respondents in respective petition.

1. With the consent of the learned advocates for the respective parties, all these matters are taken up for final hearing today.

2. As the common question of law and facts arise in this group of petitions, they are being disposed of by this common judgment and order.

3. The petitioners in respective petition are either already having passport issued by the

respondent authority and/or they have applied for fresh passport. The respective petitioners have prayed for in the respective petition to direct the respondent passport authority to make necessary correction/s and/or the change/s in the passport with respect to either date of birth and/or place of birth as in the certificate issued by the competent authority under the provisions of Births and Deaths Act, 1969 as well as in the School Leaving Certificate issued by the School Authority there is discrepancy in the date of birth.

4. It is the common contention and the case on behalf of the petitioners that as there is discrepancy in the date of birth in the certificate issued by the competent authority under the provisions of the Births and Deaths Act, 1969 and in the school leaving certificate and that in the passport issued by the respondent authority the date of birth is mentioned on the

basis of the school leaving certificate which was produced by the applicant for issuance of the passport at the time when they applied for passport and/or when they have applied for fresh passport with a request to mention the date of birth in the passport on the basis of the certificate issued by the competent authority under the provisions of the Births and Deaths Registration Act, 1969 and that when they have approached the passport authority for mentioning the date of birth in the existing passport and/or in the fresh passport, the date of birth as mentioned in the certificate issued by the competent authority under the provisions of the Births and Deaths Act, the respondent authority has refused to entertain the said application and/or refused the request to make necessary correction in the passport, in the other words, refused to correct the date of birth in the passport on the basis of the certificate issued by the competent authority issued under the

provisions of the Berths and Deaths Registration Act and / or to have refused to issue fresh passport mentioning the correct date of birth and / or place as per the certificate issued by the competent authority under the Births and Deaths Registration Act and they have directed the respective petitioners to obtain appropriate order from the Court and therefore, all the petitioners have preferred the present Special Civil Applications under Article 226 of the Constitution of India for an appropriate writ, direction and/or order directing the respondent passport authority to make necessary correction in the passport to correct the date of birth in the passport as per the certificate issued by the Competent Authority issued under the provisions of Births and Deaths Registration Act, 1969 and/or to issue fresh passport mentioning the correct date of birth and / or place as per the certificate issued by the competent authority under of the provisions of Births and Deaths

Registration Act.

5. In response to the notice issued by this Court, Shri J.M.Malkan, learned Asst. Solicitor General for India and Shri M.A.Shaikh, learned Additional Standing Counsel for the Central Government appear on behalf of the passport authority. Learned Counsel appearing on behalf of the passport authority have submitted that only on the basis of the particulars given by the respective petitioner-applicant, the date of birth / place of birth is mentioned in the passport and the passport authority is not at fault. It is also further submitted that as there is discrepancy in the date of birth in the certificate issued by the competent authority under the provisions of the Births and Deaths Registration Act, as well as the school leaving certificate, the respondent authority is justified in insisting for an order from the Court. It is also further submitted that on the

basis of the usual orders passed by this Court, necessary correction/s as sought for by the petitioner is being made in the passport correcting the date of birth or place as per the certificate issued by the competent authority issued under the provisions of the Births and Deaths Registration Act and therefore, it is requested to pass appropriate orders.

6. Learned advocates appearing on behalf of the parties have submitted that normally such type of petitions are filed against the passport authority directing the said authority to make necessary correction in the passport by correcting the date of birth as per the certificate issued by the competent authority under the provisions of Births and Deaths Registration Act and normally the orders are being passed by this Court disposing special civil applications directing the respondent passport authorities to look into the supporting

documents submitted by the respective applicant/s for necessary correction in the passport in the date of birth and/or place of birth and to pass appropriate order in accordance with law and on the basis of the said orders, the passport authorities are correcting the date of birth and place of birth and therefore, it is requested to pass similar order/s.

7. At the outset, it is required to be noted that whenever such type of petitions are filed by the applicant/s who wanted get necessary correction in the date of birth in the passport, orders were passed while disposing of Special Civil Application/s with direction to the effect that the passport authority may look into the supporting documents produced by the respective petitioner / applicant and to pass appropriate order in accordance with law. When there is discrepancy in the date of birth in the certificate issued by the competent authority as

well as school leaving certificate, the respondent authorities were directed to look into the same and consider and pass an appropriate order in accordance with law. It is reported that on the basis of such orders, the passport authorities were/are correcting the date of birth in the passport and/or issuing fresh passport mentioning the correct date of birth and/or place as per the certificate issued by the competent authority under the provisions of Births and Deaths Registration Act. It is required to be noted that while disposing of such petitions, this Court never passed order/s straightaway directing the Passport Authority to make necessary correction in the passport so far it relates to date of birth and/or place of birth. The only order and direction being issued by this Court was directing the Passport Authority to look into the same and to pass appropriate order in accordance with law and only on the basis of such orders the passport authorities

were/are correcting the name, date of birth and / or place of birth. Therefore, this Court fails to appreciate that why such order of this Court requires to be obtained by the petitioner/s herein and/or any of applicant or the person who wants to have necessary correction in the passport in the date of birth and/or the place of birth on the basis of the certificate issued by the competent authority under the provisions of the Births and Deaths Registration Act and to obtain the simple order by this Court merely directing the passport authority to look into the same and to pass the order in accordance with law. This may lead to not only unnecessary burden the applicant of expenditure but also lead to burden the Courts also. As such, the Passport Authority itself is required to look into the same and to pass an appropriate order in accordance with law. One can appreciate that if this Court on appreciation of evidence is passing the order directing the respondent passport

authority to correct the date of birth in the passport. Such is not the position. As stated above, the only order which was being passed by this Court was directing the Passport Authority to look into the supporting documents and to consider the same in accordance with law and on the basis of such orders only the passport authorities were correcting the date of birth and therefore, this Court is of the firm opinion that for the aforesaid relief when the passport authority itself is correcting the date of birth and/or place and looking into the supporting documents in accordance with law, such petitions are not warranted as the passport authority itself has to undertake such an exercise.

8. It is common case on behalf of the petitioners that whenever the respective petitioners have approached the passport authority for necessary correction in the passport in the date of birth as well as the

place of birth, their applications are never accepted and entertained and straightaway they are told by the passport authority to obtain order/s from the Court. Shri J.M.Malkan, learned Asst. Solicitor General for India appearing on behalf of the passport authority is not in a position to satisfy the query of this Court that which Court's order the Passport Authority requires i.e. an order either from this Court, or from the court of Learned JMFC and/or a declaration by the Civil Court.

9. At this stage, learned advocates appearing on behalf of the Passport Authority have relied upon the instructions issued by the Ministry of External Affairs vide No.VI/401/2/5/2001 dated 18.4.2001 which reads as under:

> “As per the current practice, in case of change of date of birth / place of birth, the applicant is required to produce the

original declaratory order from a first class judicial magistrate. However in view of the recent judgment given by the High Court judicature at Mumbai in CWP No.1072 of 2000 filed by Shri Jigar Harish Shah, the following clarifications are issued.

(a) Where an applicant is seeking rectification / correction of a mistake in the entry on date of birth / place of birth in the passport, PIA may after verifying / satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to

issue any correction or amendment, PIA may affect the necessary amendment in a passport without insisting on a court order. As per the provisions of Section-21 of the General Clauses Act, 1997, a competent authority issuing a certificate could also make necessary amendment to the same.

© Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e. a school / educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e Municipal Authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent court of jurisdiction,

certifying the valid date of birth / place of birth."

10. Therefore, it is submitted that unless in case of conflicting sources of valid proof, the Passport Authority is compelled to direct the applicant to approach the civil order from a competent court of jurisdiction certifying the valid date of birth / place of birth. Therefore, it is clear that nowhere remedial measures / directions are required to be obtained from the High Court. It is also submitted that as per the observations made by the Division Bench of the Hon'ble Bombay High Court in its decision in case of JIGAR HARISH SHAH V. UNION OF INDIA AND ANOTHER, reported in AIR 2001 Bombay 60, primacy is being given to the birth certificate issued by the Municipality or the competent Government Authority.

11. An identical question came to be considered

by the Division Bench of the Hon'ble Bombay High Court in case JIGAR HARISH SHAH V. UNION OF INDIA AND ANOTHER, AIR 2001 Bombay 60, wherein when the amendment was sought by the petitioner for making correction regarding date of birth, the Division Bench of the Bombay High Court has held that the passport authority is competent to add to, amend, vary or rescind an order issued by it earlier in view of Section-21 of the General Clauses Act and the matter need not be referred to the Judicial Magistrate and accordingly, the passport authority was directed to hold an enquiry on hearing the petitioner in relation to the petitioner's claim about his correct date of birth. Relevant observations and direction of the Hon'ble Court in the aforesaid decision read as under :

> “We, therefore, instead of issuing a direction to the Judicial Magistrate in this matter, direct the Passport

> Authority itself to hold an enquiry on hearing the petitioner in relation to the petitioner's claim about his correct date of birth and in case the Passport Authority is satisfied with regard to the claim put forth by the petitioner. We further order it to effect the necessary change in the Passport issued in favour of the petitioner.“

12. A very identical question came to be considered by this Court in a decision in case of PRASHANT VINODBHAI ACHARYA V. REGIONAL PASPORT OFFICER reported in 2004 (1) GLR 212 wherein this Court directed the respondents Passport Authority to consider the case of the petitioner for change in the birth date at the time when application for new passport is considered for issuing the passport with clarifications that the Court has not gone into the legality and validity of the genuineness of the above correction and that any

order passed by the Passport Authority shall not give any additional right to the petitioner, in any other field on account of any such change including that of service or any other field.

13. Therefore, considering the judgment of the learned Single Judge of this Court in case of PRASHANT VINODBHAI ACHARYA V. REGIONAL PASSPORT OFFICER (Supra) and considering the decision of the Division Bench of the Bombay High Court in case of JIGAR HARISH SHAH V. UNION OF INDIA AND ANOTHER (Supra) and considering the instructions issued by the Ministry of External Affairs which are reproduced hereinabove, the Passport Authority is not justified in refusing to entertain the application for considering the change of date of birth and / or place of birth in the passport and Authority is not justified in insisting for order of Court in each and every case. As held in the aforesaid decisions, and even as per the instructions issued by the

Ministry of External Affairs, the Passport Authority has jurisdiction to make necessary correction in the passport so far it relates to the date of birth and place of birth is concerned on satisfying itself with regard to genuineness of the document/s. Therefore, the Passport Authority is required to hold an appropriate enquiry on the application being made to correct the date of birth and/or place of birth in the existing passport and/or for issuance of fresh passport mentioning the correct date of birth as per the certificate issued by the competent authority issued under the provisions of Births and Deaths Registration Act, 1969 in a case where there is discrepancy in the date of birth and/or place mentioned in the certificate issued by the competent authority under the provisions of the Births and Deaths Registration Act and the School Leaving Certificate. However, for that purpose, the authority is required to be satisfied with regard to the claim put forth by the applicant

(petitioner/s in the instant case) on the basis of the supporting documents issued by the competent authority issued under the provisions of the Births and Deaths Registration Act.

14. At this stage, it is also required to be noted that normally when there is a discrepancy in the date of of birth in the certificate issued by the competent authority under the provisions of the Births and Deaths Registration Act as well as school leaving certificate, in that case, primacy is required to be given to the birth certificate issued by the Municipality and the competent Government Authority under the Births and Deaths Registration Act, unless it is on verification of such document, a doubt is created and / or authority is not satisfied with regard to the genuineness of the same. It is also required to be noted that when there is dispute with regard to genuineness of the date of birth and / or certificate, then, certainly the

passport authority can refuse to make necessary correction and / or effect change in the passport with regard to the date of birth and/or place of birth is concerned, and may insist for order from the Court i.e. declaratory order from the Civil Court but for that, a petition under Article 226 of the Constitution of India is not maintainable as further evidence is to be led with regard to correct date of birth and on appreciation of evidence, declaratory order is required to be passed and this Court in exercise of the powers under Article 226 of the Constitution of India would not like to enter into the disputed question of facts. Therefore, for the aforesaid purpose, the passport authority is required to entertain the application, hold necessary enquiry and consider the same and if not satisfied then, to give reasons for not accepting the same.

15. Therefore, insistence on the part of the respondent passport authority straightaway

refusing to even accept the application for change of date of birth and / or place of birth and not hold any enquiry and consider the same and straightaway insisting for Court's order is not justified. In the present Special Civil Applications, either there is nothing on record to show that any application was made by the respective petitioner to make necessary correction in the date of birth and / or place of birth wherever they are holding passport and/or no proof has been submitted by the respective petitioner and only vague averments are made in the petition that they have gone to the authority but the authority has refused to accept the same and had insisted for court's order. Under the circumstances, the petitioners are directed to approach the concerned passport authority for necessary correction in the passport with regard to correct date of birth and / or place of birth with supporting documents and the respondent passport authority is required to be directed to

consider the same in light of the observations which are made hereinabove. On receipt of the application and even as per the clarification of the passport authority, where an applicant is seeking rectification / correction of a mistake in the entry on date of birth / place of birth in the passport, the passport authority after verifying / satisfying himself is required to affect the correction treating the same as a technical correction and there is no need for a declaratory order in such cases. Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment, Passport Authority itself may affect the necessary amendment in a passport without insisting on order of court as as per the provisions of Section-21 of the General Clauses Act, 1997, a competent authority issuing a certificate could also make necessary amendment to the same.

However, in a case where initial entry has been made on the basis of a supportive document issued by one competent authority i.e. a school / educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e Municipal Authorities resulting in conflicting sources of valid proof, and when such request is made with supporting documents, the Passport Authority is required to consider the said application and is required to hold necessary enquiry with regard to genuineness of the same and if the passport authority is satisfied with the same, necessary amendment and / or change can be effected in the passport. However, if after holding necessary enquiry as to the genuineness of the document in respect of the date of the date of birth and place is doubted, in that case, it will be open for the Passport Authority to insist for court's declaratory order and as stated above, from the Civil Court and/or

from the competent authority and certainly not from the High Court in a petition under Article 226 of the Constitution of India as the same would amount to entering into disputed questions of fact which the High Court normally would not like to enter into in exercise of the powers under Article 226 of the Constitution of India.

16. For the reasons stated above, all the petitions are disposed of directing and/or relegating each petitioner to move an appropriate application for necessary correction and/or amendment and/or change in the date of birth and / or place of birth as the case may be and the respondent Passport Authority is directed to consider the same after holding necessary enquiry as stated hereinabove and to pass appropriate order in accordance with law and on merits and in light of the observations made hereinabove. It is also further directed to the respondent Passport Authority that henceforth in the future cases the

passport authority shall not straightaway refuse to entertain the application and/ or to accept the application for correction of the date of birth and place of birth without holding any enquiry and shall not straightaway without holding necessary enquiry call upon the applicant to obtain appropriate order from the Court.

17. Rule, in each petition, is made absolute to the aforesaid extent, however, there shall be no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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